

MINUTES

MONTANA SENATE 56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR AND EMPLOYMENT RELATIONS

Call to Order: By **CHAIRMAN TOM KEATING**, on March 23, 1999 at 3:03 P.M., in Room 413/415 Capitol.

ROLL CALL

Members Present:

Sen. Tom Keating, Chairman (R)
Sen. Fred Thomas, Vice Chairman (R)
Sen. Sue Bartlett (D)
Sen. Dale Berry (R)
Sen. Vicki Cocchiarella (D)
Sen. Alvin Ellis (R)
Sen. Bill Wilson (D)

Members Excused: Sen. Bob Keenan (R)
Sen. Walter McNutt (R)

Members Absent: None.

Staff Present: Gilda Clancy, Committee Secretary
Eddye McClure, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 229, HJR 16, SJR 15,
3/17/1999
Executive Action: SJR 15, HB 229

HEARING ON HB 229

Sponsor: REP. DAVID EWER, HD 53, Helena

Proponents: None.

Opponents: None.

Informational Testimony: Mike Foster, Montana Contractor's Association

Opening Statement by Sponsor:

REP. DAVID EWER, HD 53, Helena, explained this is a repealer bill and he was asked to carry it for the Montana League of Cities and Towns. The section they are asking to repeal is the section on the inspections of public buildings scaffolding. He understands this to be an antiquated part of the statute.

The scaffolding inspection under current law public sector is completed by the Department of Labor. For private enterprises it is completed by OSHA (Occupational Safety & Hazard Act). With the old statute still on the books, a lawsuit was filed against the City of Missoula and consequently, the building department was sued.

Proponents' Testimony: None.

Opponents' Testimony: None.

Informational Testimony:

Mike Foster, Montana Contractor's Association, stated he did not know whether to be for or against this bill. He does not understand why it has been brought forth. There was another bill regarding building inspectors to increase the authority of the Montana League of Cities and Towns, and this one gets rid of authority?

Questions from Committee Members and Responses:

CHAIRMAN KEATING asked REP. EWER if these building inspectors are in the Department of Commerce or are these county inspectors?

REP. EWER answered these are municipal inspectors, but what they proposed to repeal is the part of the code which talks about the inspection of scaffolding.

CHAIRMAN KEATING asked if that is being done by the Department of Labor already.

REP. EWER repeated this is an antiquated statute. What currently happens is that inspection for public projects is done by the Department of Labor and for private projects it is done by OSHA.

SEN. COCCHIARELLA mentioned this bill was a result of a scaffolding accident on campus at the University of Montana. The suit came back on the city because this law was on the books. There was no inspection and there was no way to know the scaffolding was there.

REP. EWER remarked that is what happened.

SEN. COCCHIARELLA asked **Jerry Driscoll, Montana Building and Trades Association**, on a job site, who inspects scaffolding. When would this bill have an impact one way or another on safety issues?

Mr. Driscoll responded on a private job he worked, the internal people inspected the scaffolding, OSHA inspects scaffolding, and in certain cases the Department of Labor inspects scaffolding. Also, sometimes a project engineer will inspect scaffolding.

SEN. COCCHIARELLA asked if in this bill, if **REP. EWER** is eliminating the requirement of municipalities to inspect scaffolding.

Mr. Driscoll responded he has never seen municipalities inspecting scaffolding.

Closing by Sponsor:

REP. EWER closed by saying, "I close".

{Tape : 1; Side : A; Approx. Time Counter : 7 - 43}

HEARING ON HJR 16

Sponsor: **REP. DAVID EWER, HD 53, Helena**

Proponents: **Melissa Case, Hotel Employee's & Restaurant
Employee's Union
George Harper, Representing Self, Helena
Donna MacDonald, Hotel Employee's & Restaurant
Employee's Union
Rex Kendall, International Brotherhood Electrical
Workers (EBEW)
Betty Waddell, Montana Association of Churches
Don Judge, AFL-CIO
Kelley Hubbard, Montana Senior Citizen's
Association
Inga Nelson, Montana Education Association and
Montana Federation of Teachers
Frank Cote, Deputy State Auditor, State of Montana**

Opponents: **None**

Opening Statement by Sponsor:

REP. DAVID EWER, HD 53, Helena, said this is a short resolution. The intent is to try to recognize everyone has an interest to allow employees to work for a livable wage. That can be accomplished a number of ways. One of the reasons the middle class in America is large, is through unions. The reality of enforcing fair trade and fair labor lies much with the government and they are not doing their job.

This resolution seeks to try to support Montanans the right to freely choose whether or not to unionize without undue intimidation and coercion. In Montana a person can wear a right-to-organize button and be fired for wearing it.

Part of Montana law states it is unfair labor practice for an employer to interfere with restraining or coercing employees when they are exercising their rights. It is also unfair labor practice to dominate, interfere or assist in information from a labor organization and also, it is an unfair labor practice for unions to try to coerce people to join a union. It only affects those in the public sector. People should have the right to join a union. While those rights are somewhat preserved in the statutes of Federal law, they are not being enforced.

Proponents' Testimony:

Melissa Case, Hotel Employee's & Restaurant Employee's Union, informed the Committee this is a resolution somewhat similar to a bill earlier in the session. Through the prior bill, the Committee was informed about stories about coercion and

intimidation and the problems found in workplaces. They sought immunization. Those problems are real and they exist.

The difference between SJR 6 and HJR 16 is that SJR 6 resolved the legislature send a message to employers regarding their conduct during organizing jobs, and ultimately to abide by the National Labor Relations Act. This resolution focuses on a larger problem which exists with the National Labor Relations Act and Board (NLRB) and their complete ineffectiveness. Through HJR 16, they are asking a message be sent to Congress to fix this problem.

These problems affect Montanans and Montana. She gave a scenario of what happens when the NLRB is called to investigate a complaint of unfair labor practice. An investigator from the NLRB will investigate the merits of the charge. The investigator finds those charges have merit and the union has committed an unfair labor practice in the eyes of the Board. They seek settlement from the union. This says the union will not coerce, etc. and has to be signed. If that document is signed, there is a non-admission of guilt clause. If the union decides they will not sign the terms of this settlement but want to appeal, the NLRB sends out an administrative law judge. This typically happens approximately one year after charges are filed. This judge conducts a hearing and rules the union was involved in unfair labor practices. If the union decides to appeal this to the NLRB, it is about two years old now. The NLRB upholds the decision of the administrative law judge, it has to be appealed to the Federal District Court. This is the first point the union can get out from under the NLRB proceedings. From there it is appealed to Federal District Court and if they find the same findings as the NLRB, the union now has to appeal to Federal Supreme Court. At this time, they are about a decade away from when the original charges were filed.

This can have a detrimental affect on both employers and unions because this overturn of the workforce is causing justice not to be served. The focus should be on justice. Justice delayed is often justice denied.

George Harper, Representing Self, Helena, stated from the perspective of an average citizen, we organize for everything. It makes sense for people to be encouraged to organize to get their jobs done better, to help build a better society, to build this country economically, and securely. He encouraged support of this bill.

Donna MacDonald, Hotel Employee's & Restaurant Employee's Union, Helena, read letters from people not present explaining why it is important to be a union member. She also explained the union was

a great benefit to her and protected her in many ways from different issues.

Rex Kendall, International Brotherhood of Electrical Workers (IBEW), Local #44, spoke earlier before the Committee regarding his casualty of an organizing campaign. He now is an organizer for the union. The major focus of this body during this session is how we are going to get livable wages for Montana. The facts are union wages are higher than non-union wages. We have to do everything we can do to get wages higher.

Betty Waddell, Montana Association of Churches, spoke in support of HJR 16. **EXHIBIT(1as65a01)**

Don Judge, Executive Director, AFL-CIO, said they are in full support of this bill. The fact that union wages are higher is also true about the prevalence of vacation, sick leave, holidays, of pension systems, of health and welfare systems, of greater productivity, and less turn-over. These are Bureau of Labor statistics. They show having a union is good for most employers. This resolution encourages Montana employers to recognize a worker's right to organize without threats of intimidation or coercion. It also encourages Congress to look at the National Labor Relations Act and fix the problems which were described. It was intended to protect workers and no longer does that.

Kelley Hubbard, Montana Senior Citizen's Association, stated they support this resolution also.

Inga Nelson, Montana Education Association, and Montana Federation of Teachers, also supports this resolution.

Frank Cote, Deputy State Auditor, State of Montana, explained he grew up with unions and they help families. He supports this bill.

Opponents' Testimony: None.

Questions from Committee Members and Responses:

CHAIRMAN KEATING remarked when he first came to the Labor Committee in 1981, there were a larger percentage of workers who were union members. At that time, it was calculated to be about 50,000 to 60,000 union members in Montana and the labor force at that time was closer to 300,000 to 400,000 as it is now. During that time, he saw an increase in the labor force from labor statics but a decrease in union membership. There are not any laws in Montana prohibiting collective bargaining and we do not have a Labor Relations Board who issues rules and regulations.

He said he can only presume that people made a freedom of choice to be in or not in the union.

From the testimony, it seems the National Relations Labor Board is not backing up the unions. The accusation is there are employers who try to stop unionizing and that they are in violation of the Labor Relations Act. He asked **Don Judge** if that is his consideration.

Mr. Judge answered in 1955 about one in five workers were union members. In 1986 that dropped to one in eight and today that ratio is much lower. From 1989 to today, eight in ten of the jobs we've lost in this country were union jobs. They were manufacturing jobs which we have shipped to Mexico, China, etc. One in twenty jobs created were in occupations, typically, represented by organized labor.

Unions did not respond well to that. Specifically, in 1981, Montana had about 10,000 more members in the AFL-CIO than today. Most came about because of the shut down of the Anaconda facilities in Anaconda, Butte and Great Falls. As a result, union contracts were lost in restaurants and hotels as well.

The National Relations Labor Act has gradually been used to the detriment of worker's ability to organize. One way is the slow process of bringing justice to workers who have been denied in their right to organize. If a worker is fired from a hotel and has to go to work in a restaurant, two years later the NLRB says the hotel was wrong in firing, the only penalty they apply is the loss of hotel wages minus the restaurant wages. This does not discourage employers.

The other problem is the Supreme Court rulings which have determined the National Relations Labor Act states a person cannot be fired when he goes on strike, but they cannot permanently be replaced. That has made it difficult to join unions.

On the other hand, in Montana over the past 24 months, they have seen almost 4,000 new workers join unions. They are pleased with that but there are still too many workers who are being denied the right to organize because of the National Relations Labor Act.

CHAIRMAN KEATING remarked about the time the smelters were shut down it when the environmental groups began to invade this state and attack our basic industries. They were successful in shutting down mining, the smelters, logging and a number of our basic industries. The union movement supported that environmental movement in those laws which were placed in our

statutes. It seems to him as we shut down our basic industries and put more emphasis on tourism, we begin to see a decline in our per capita income. He asked **Mr. Judge** if this wasn't because of loss of our basic industries rather than employers not allowing the employees to unionize.

Mr. Judge alleged in 1979 and 1980, when the Anaconda Corporation was threatening closing there was a great political debate. The issue was the environmentalists and the Environmental Protection Act (EPA) shutting down the Anaconda facilities. The fact is the EPA issued a report which said the Anaconda Corporation had ten years to comply with current EPA standards. There was no reason they had to shut down at that time. The reason they did was because they got a \$300M tax break by shutting down. It was an easy way to get out from under the obligations, to sit down and negotiate contracts with the unions.

Regarding whether there have been environmental regulations which have caused industry to re-think whether or not it wants to operate in a state like Montana, there have. The unions have supported some of that because those were the right things to do for the citizens of Montana. They opposed the cyanide ban in Montana. He stated it is not all that easy to paint it with one brush.

SEN. WILSON remarked SJR 6 alluded to intimidation and coercion. He doesn't remember any glaring examples in the last hearing.

REP. EWER referred to **Rex Kendall** who tried to organize with Channel 12 news along with two others and they were all fired.

SEN. WILSON contended that workers were also fired for wearing a union badge.

REP. EWER alleged there is nothing under current Montana law which says a person couldn't be fired. There is no protection for the private sector. We have to rely on a toothless federal system which is not protecting people.

SEN. WILSON said that process is long, convoluted, and lasts for years.

REP. EWER reported not only years, but the redress is wage loss only. There are a lot of compound issues in this.

{Tape : 2; Side : B; Approx. Time Counter :43 - 68}

SEN. WILSON asked **Melissa Case** about the Grouse Mountain incident.

Ms. Case stated the kind of violations they have seen an increase in are violations in which workers suffered an actual loss. They lose wages, hours, and suffer actual loss. Those incidents have increased from 1985 until now over 20%.

Since 1996 until the present, the union has filed 15 violations against Grouse Mountain Lodge which specifically have to do with workers who have suffered losses. There have been 10 individuals who have suffered loss of jobs. A woman named **Pam Driscoll** was an employee who was an active member of the organizing committee. Grouse Mountain Lodge had an organizing committee of approximately 30 people in an establishment which employed about 100 people depending on the season. That organizing committee of 30 individuals approached their owner about signing a neutrality agreement. The employer refused to sign that neutrality agreement in late 1995 and charges were filed in 1996. Charges were filed and they were found to have seriously committed unfair labor practices. There are many examples of this in the State. She also talked about wrongful discharge suits.

SEN. WILSON asked if there are other resolutions like this in the United States.

Ms. Case answered, "not now but there will be".

SEN. THOMAS commented in reading this resolution, it paints a pretty good picture to be a union member. If things are so good as it says, why do we need a resolution to state so?

Closing by Sponsor:

REP. EWER responded the fundamental issue in front of us today is power. The ability to put together a union has always been difficult and it is getting harder. One reason it is getting harder is the effort to level the playing field a little was the National Relations Labor Act in the 1930s. If those are not enforced and if employers can keep people from organizing, the efforts will fail more than they succeed. That is why this bill is in this Committee. People with capital have more power than those who don't have capital. We need to be concerned and we also need to urge people to band together to make a better living. He gave another example of a convention of a local government organization who hired a consultant from Missouri to tell the local government how to be non-union and how to deal with unions.

HEARING ON SJR 15

Sponsor: **SEN. FRED THOMAS, SD 31, Stevensville**

Proponents: **Jerry Driscoll, Montana Building & Construction
Trades Association
Nancy Butler, State Fund
Webb Brown, Montana Chamber of Commerce
Kevin Braun, Department of Labor & Industry
Byron Roberts, Montana Building Industry
Al Smith, Montana Trial Lawyer's Association
Don Judge, AFL-CIO**

Opponents: None.

Opening Statement by Sponsor:

SEN. FRED THOMAS, SD 31, Stevensville, explained the resolution. This asks the interim committee to look into Workers' Compensation rates and frequency and losses. This covers the basic elements of what this Committee has been involved with. The rates are high and the benefits are low. Maybe it is the work environment or culture or hazard frequency. He hopes the interim committee can bring back solid answers to increase benefits and lower rates.

Proponents' Testimony:

Jerry Driscoll, Montana Building & Construction Trades Council, thought the resolution is very well written. The \$205.50 per week is one-half the state's average weekly wage which is the lowest. The last 'whereas' on page 1 covers the frequency of claims and the high hazard employment. The high hazard employment is diminishing because they are outlawing all good paying jobs. In 1985 Workers' Compensation was studied by the Department of Labor. The debt of the State Fund at that time was about \$111M. By the time the legislature met again it was \$500M. In each session thereafter, there has been a study on Workers' Compensation. In 1993 **SEN. HARP** passed the Safety Culture Act. He believes the self-insured people should be studied because he doesn't believe their frequency is as high as other industries mostly because they can find alternate work and light duty in the place of employment. Therein lies the problem. There is no safety for the small employer. Montanans have great work ethics and now if a business does not have a safety committee, the State Fund will surcharge the business 20%. They are trying to repeal that law and insert it into rule. If we don't have safety, there will be a lower permanent partial weekly wage and a lower partial benefit next time. The frequency may or may not be higher. He doesn't believe the smaller employers can afford it, but if there is a way for the State Fund to instill safety, this would be a great idea.

Nancy Butler, State Fund, stated the frequency of permanent partial claims in Montana is a concern to them. They support the interim committee so the issues can be looked at. She said **Jacqueline Lenmark, American Insurance Association**, couldn't be present but asked **Ms. Butler** to voice her support of this resolution as well.

Webb Brown, Montana Chamber of Commerce, rose in support of this resolution. They are concerned with the rates compared to other states.

Kevin Braun, Department of Labor & Industry, informed the Committee on line 20 of the resolution the words "permanent partial" should be inserted behind the state's maximum weekly rate. That would make the resolution more accurate.

Byron Roberts, Montana Building Industry Association, stated they run in conjunction with the State Fund a Workers' Compensation program. They have a safety program and he was looking at some statistics recently from the National Association of Home Builders and they were third from the bottom in Workers' Compensation costs in regard to their industry. They support this measure.

Al Smith, Montana Trial Lawyer's Association, agrees with the intent of this resolution. Some of the issues not covered by this resolution which have been talked about involve occupational disease, health care providers, and problems with provider rates. Also, denial rates and rehabilitation benefits for minimum wage workers. He believes SJR 15 is good, but also thinks we need to look at the big picture.

Don Judge, Executive Director, AFL-CIO, supported SJR 15. They agree that studies in the past have produced very little and we need to take a look at all aspects of Workers' Compensation.

Opponents' Testimony: None.

Questions from Committee Members and Responses:

CHAIRMAN KEATING stated he hoped the legislative body will vote for this study to be near the top of the list so it gets done because the history and experience of a lot of legislators will not be here next time. If there is a study completed for the sophomores and other legislators who have not had the experience over the years in this matter, they will derive some knowledge and information which is beneficial.

SEN. BARTLETT remarked she agreed to sign this resolution and she will vote for it only under the condition she does not serve on this committee.

Closing by Sponsor:

(There was no official closing by sponsor)

{Tape : 1; Side : B; Approx. Time Counter : 68 - 71}

EXECUTIVE ACTION ON SJR 15

Motion: SEN. COCCHIARELLA moved that SJR 15 DO PASS.

Motion/Vote: SEN. COCCHIARELLA moved that THE AMENDMENT BE ADOPTED. **EXHIBIT**(las65a02) Motion carried unanimously.

Vote: Motion that SJR 15 BE ADOPTED AS AMENDED carried unanimously.

EXECUTIVE ACTION ON HB 229

Motion/Vote: SEN. WILSON moved that HB 229 BE CONCURRED IN. Motion carried unanimously.

ADJOURNMENT

Adjournment: 4:14 P.M.

SEN. TOM KEATING, Chairman

GILDA CLANCY, Secretary

TK/GC

EXHIBIT (las65aad)